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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MISAEL CHAVEZ,

Defendant and Appellant.

In re

MISAEL CHAVEZ,

on

Habeas Corpus.

B213387

(Los Angeles County
Super. Ct. No. VA106942)

B219390

APPEAL from a judgment of the Superior Court of Los Angeles County,
Leland H. Tipton, Judge. Affirmed.

PETITION for writ of habeas corpus. Writ Denied.

Tara Hoveland, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Misael Chavez appeals from the judgment entered and seeks a writ of habeas corpus following his plea of no contest to one count of committing a lewd act upon a child under the age of 14 (Pen. Code, § 288, subd. (a))¹ and one count of committing a lewd act upon a child who was 14 years of age and at least 10 years younger than Chavez (§ 288, subd. (c)(1)). The trial court sentenced Chavez to eight years, eight months in prison. We affirm the judgment and deny the petition for writ of habeas corpus.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

Chavez was employed as a construction worker for the victim's father and would, at times, stay overnight at the victim's home. On August 11, 2008, the victim's brother went by his father's house to pick up Chavez for work. He found Chavez asleep under a blanket in the den with the victim, his 13-year-old sister. When her brother asked her why she was there in the den with Chavez, the victim refused to discuss it.

After work, the victim's brother returned to the family home with Chavez to talk about the incident with the victim's parents. After he learned that Chavez had threatened to hurt members of the victim's family if she spoke to anyone about their sexual relationship, the victim's brother called the police.

The police responded to the brother's call and, at the family home, interviewed the victim. She reluctantly told the officers that Chavez had been forcing her to have sex with him since the beginning of July 2008. What had begun as "fondling" had escalated into forcible digital penetration, sexual intercourse and oral copulation. Chavez continued to tell the victim that he would harm members of her family if she refused his advances or told anyone about them.

2. Procedural history.

On August 13, 2008, Chavez was charged by felony complaint with five counts of committing a lewd act upon a child under the age of 14 years (§ 288, subd. (a)) and one

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The facts have been taken from the probation report.

count of committing a lewd act upon a child 14 years old when he, the defendant, was at least 10 years older than the victim (§ 288, subd. (c)(1)). At his arraignment, held on August 13, 2008, Chavez demanded to be represented by counsel. Accordingly, the Public Defender Department was appointed. After waiving the reading of his additional constitutional rights, Chavez entered pleas of not guilty to the alleged charges.

After waiving his right to a preliminary hearing, Chavez agreed to a negotiated plea under the terms of which he would be sentenced to eight years for the offense alleged in count 1 and one-third the mid-term, or eight months, for the crime alleged in count 6, for a total prison term of eight years, eight months. All other counts and allegations would be dismissed.

Chavez was advised of and waived his right to trial by court or jury, his right to confront and cross-examine the witnesses against him, his right to subpoena witnesses and present a defense and his privilege against self incrimination. In addition, Chavez was advised that, if he was not a United States citizen, his conviction could have “the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” Chavez then entered pleas of no contest to the charges alleged in count one, a violation of section 288, subdivision (a), and count 6, a violation of section 288, subdivision (c)(1). Chavez’s motion to dismiss the remaining counts and allegations was “submitted to [the] time of sentenc[ing].” The trial court found that there was a factual basis for Chavez’s plea and accepted the terms of the plea agreement.

At proceedings held on October 21, 2008, Chavez waived arraignment for judgment and indicated that there was no legal cause why sentence should not be pronounced. The trial court then sentenced Chavez to eight years, eight months in prison. All remaining counts and allegations were dismissed. Chavez was given presentence custody credit for 105 days consisting of 71 days actually served and 34 days of good time/work time.

Chavez was ordered to make restitution to the victim in an amount and manner prescribed by the Department of Corrections (§ 1202.4, subd. (f)) and to register as a

convicted sex offender. In addition, Chavez was directed to pay a \$300 “sex offender fine” (§ 290.3), a \$200 restitution fine (§ 1202.4, subd. (b)), a stayed \$200 parole revocation restitution fine (§ 1202.45), and a \$20 court security fee (§ 1465.8, subd. (a)(1)).

Chavez filed a timely notice of appeal on November 17, 2008. His request for a certificate of probable cause was denied on December 11, 2008.

This court appointed counsel to represent Chavez on appeal on March 5, 2009.

CONTENTIONS ON APPEAL

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed July 31, 2009, the clerk of this court advised Chavez to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

PETITION FOR WRIT OF HABEAS CORPUS

In a petition filed in propria persona on October 5, 2009, Chavez appears to be arguing that he was coerced into entering a plea and that he did not understand what he was doing when he agreed to plead guilty to the alleged charges. He urges his counsel told him to initial and sign a form he did not understand and simply to answer “ ‘Yes’ ” whenever the trial court asked him a question.

However, Chavez, who had the services of an interpreter, did not indicate that he did not understand the terms of the plea at the time he entered it. Instead, a review of the record indicates Chavez understood the terms and voluntarily chose to plead no contest to the alleged charges. His own, self-serving statements to the contrary, without any objective corroborating evidence, are insufficient to support relief. (*In re Alvernaz* (1992) 2 Cal.4th 924, 938, 945.)

DISPOSITION

The judgment is affirmed.

The petition for writ of habeas corpus is denied.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.